

### **REMARKS**

Claims 16, 18-28 and 30-39 remain pending in the application. Claims 26 and 35 are withdrawn. Claims 16, 18-25, 27-28, 30-34 and 36-39 are rejected. The Examiner is respectfully requested to reconsider and withdraw the rejection(s) in view of the amendments and remarks contained herein.

### **REJECTION OF CLAIMS UNDER 35 U.S.C. § 103**

Claims 16, 18-25, 27-28, 30-34 and 36-39 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Marshall et al., U.S. Patent No. 5,147,057. Applicant respectfully traverses this rejection.

Applicant has amended Claim 16 to recite a closure and heat set, wide mouth container combination. The heat set, wide mouth container contains a commodity and a headspace gas, and the closure displaces a portion of the headspace gas. The combination includes means for sealing the closure against a finish of the heat set, wide mouth container. The combination also includes a headspace-displacing member attached to the closure. Moreover, the combination includes a cover that is coupled to the headspace-displacing member to define a hollow cavity between the cover and the headspace-displacing member. Furthermore, the combination includes a clearance defined between the headspace-displacing member and the finish. Claim 33 has been similarly amended to include a cover that is coupled to the headspace-displacing member to define a hollow cavity between the cover and the headspace-

displacing member. Claim 36 has been amended to conform to Claim 33, as amended.

Support for the amendments to Claims 16 and 33 can be found, at least, in paragraphs [0042] and [0054], and in FIGS. 4-6. In the exemplary non-limiting embodiments of the present application, a cover sheet 48 or a closure body 54 is included for defining a hollow cavity with the headspace-displacing member 44. Furthermore, in some embodiments, an agent 58 can be housed within the hollow cavity, for instance, for absorbing gasses within the head space 30 (see paragraph [0048]).

Applicant respectfully submits that the Marshall reference fails to disclose or suggest a cover that is coupled to a headspace-displacing member to define a hollow cavity between the cover and the headspace-displacing member as recited in Claims 16 and 33. Instead, the Marshall reference merely discloses a closure cap 14 for a container. The closure cap 14 is a solid layer of material, and as such, the Marshall reference is silent as to a cover that defines a hollow cavity with a headspace-displacing member as recited in Claims 16 and 33.

Moreover, the Marshall reference provides no motivation or suggestion to modify the closure cap 14 to add a cover as recited in Claims 16 and 33, especially considering that the closure cap 14 includes a tab 38 with an actuator 42 and a straw hole 48. A cover would likely block access to the tab 38, actuator 42 and straw hole 48, and would not allow the user to apply "finger pressure" to bend and open the tab 38 (see col. 3, ll. 15-62). Thus, if the closure cap 14 were to be modified to include a cover as recited in Claims 16 and 33, the tab 38,

actuator 42, and straw hole 48 would be rendered useless, which further proves that Claims 16 and 33 are nonobvious over the Marshall reference (see MPEP § 2143.01).

Accordingly, Applicant respectfully submits that Claims 16 and 33 are allowable over the Marshall reference. Moreover, without conceding to the correctness of the Examiner's remarks thereto, Applicant respectfully submits that Claims 18-22, 27, 28, and 30-32 are allowable, at least, for the same reasons given for Claim 16 because Claims 18-22, 27, 28, and 30-32 are each ultimately dependent on Claim 16. In addition, without conceding to the correctness of the Examiner's remarks thereto, Applicant respectfully submits that Claims 34 and 36-39 are allowable, at least, for the same reasons given for Claim 33 because Claims 34 and 36-39 are each ultimately dependent on Claim 33.

Still further, Applicant has amended Claim 23 to be in independent format. As amended, Claim 23 recites a closure and heat set, wide mouth container combination, wherein the heat set, wide mouth container contains a commodity and a headspace gas, and the closure displaces a portion of the headspace gas. The combination includes a means for sealing the closure against a finish of the heat set, wide mouth container. The combination also includes a hollow headspace-displacing member attached to the closure. The headspace-displacing member includes a portion for housing an agent that interacts with the headspace gas. The combination also includes a clearance defined between the

headspace-displacing member and the finish. Support for the amendments to Claim 23 can be found, at least, in paragraph [0048].

Applicant respectfully submits that the Marshall reference fails to disclose or suggest an agent that interacts with a headspace gas as recited in Claim 23. The Marshall reference is silent as to such an agent.

Accordingly, Applicant respectfully submits that Claim 23 is allowable over the Marshall reference. Moreover, without conceding to the correctness of the Examiner's remarks thereto, Applicant respectfully submits that Claims 24 and 25 are allowable, at least, for the same reasons given for Claim 23 because Claims 24 and 25 are each ultimately dependent on Claim 23. .

### **CONCLUSION**

All of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicant therefore respectfully requests the Examiner to reconsider all presently outstanding rejections and that they be withdrawn. It is believed that a full and complete response has been made to the outstanding Office Action, and as such, the present application is in condition for allowance. Thus, prompt and favorable consideration of this Amendment is respectfully requested. If the Examiner believes that personal communication

will expedite prosecution of this application, he is invited to contact the undersigned at his earliest convenience.

Respectfully submitted,

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